

## **REMARKS**

### **Summary**

Claims 21-38 are pending in this application. Claims 1-20 have been canceled without prejudice or disclaimer to the underlying subject matter. New claims 21-38 have been added. New independent claims 21, 26, 30, and 34 include subject matter from canceled claims 1, 6, 11, and 16. Favorable reconsideration and allowance of the standing claims are respectfully requested.

### **Examiner Interview**

Applicant thanks Examiner Foud for conducting a telephone interview with Applicants' representative on June 12, 2008. During the interview, Examiner Foud and Applicants' representative discussed subject matter relating claims 9 and 14 and the grounds of rejection. The substance of the interview is reflected by the foregoing amendments and the following remarks.

### **35 U.S.C. § 103(a)**

In the Action on pages 2-5, claims 7-9 and 12-14 stand rejected under 35 USC § 103(a) as being unpatentable over United States Patent Number 6,188,898 to Phillips ("Phillips") in view of United States Patent Pub. No. 2003/0235167 A1 to Kuffner ("Kuffner"). In the Action on pages 5 and 6, claims 10 and 15 stand rejected under 35 USC § 103(a) as being unpatentable over Phillips in view of Kuffner and further view of United States Patent Number 6,167,032 to Allison et al. ("Allison"). Applicant respectfully traverses the rejections, and requests reconsideration and withdrawal of the obvious rejections.

Applicant respectfully submits that claims 1-20 have been canceled. Furthermore, Applicant respectfully submits that previously allowable subject matter from independent claims 9 and 14 has been incorporated into new independent claims 21, 26, 30, and 34.

Therefore, the obviousness rejection with respect to claims 9 and 14 will be addressed below with respect to amended claims 21, 26, 30 and 34.

Although Applicant disagrees with the broad grounds of rejection set forth in the Office Action, Applicant has created new independent claims 21, 26, 30, and 34 in order to expedite prosecution on the merits. Applicant submits that the new claims merely clarify, either expressly or impliedly, what was already present in the canceled claims.

According to MPEP § 2143, three basic criteria must be met to establish a *prima facie* case of obviousness. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on Applicant's disclosure. *See e.g.*, MPEP 706.02(j) citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

As recited above, to form a *prima facie* case of obviousness under 35 U.S.C § 103(a) the cited references, when combined, must teach or suggest every element of the claim. *See e.g.*, MPEP § 2143.03. Applicant respectfully submits that the Office Action has not established a *prima facie* case of obviousness because the cited references, taken alone or in combination, fail to teach or suggest every element recited in claims 21-38. Therefore claims 21-38 are allowable over the cited references. Phillip and Kuffner alone, or in combination, fail to teach at least one element of claim 21. Specifically claim 21 recites, in relevant part:

the configuration processor to determine the availability of the two or more physical layer blocks prior to the arrangement of a particular physical block to a desired communication protocol, ***and when there is not an available physical layer block, arranging a one of the two or more physical layer blocks that is infrequently utilized to operate according to the desired communication protocol.***

As correctly noted in the Office Action, the above-recited element is not taught by Phillips. The Office Action relies on Kuffner to teach the element. *See e.g.*, Kuffner at

page 3, paragraph [0028], line 39 to line 42 and Fig. 5. Applicant respectfully disagrees that Kuffner teaches this element.

Applicant respectfully submits that the missing language of claim 21 is not disclosed by Kuffner. Kuffner states at the given cite recites, in relevant part:

subsequent configuration may differ from the previous configuration—that is, the first transceiver may be redeployed as GPS, while the third transceiver now stays at the CDMA2000 configuration because its antenna is more favorably oriented.

Applicant respectfully submits that Kuffner arguably teaches a multiple mode RF communication device comprising of a system manager to deploy first and second communication resources according to deployment rules. *See e.g.*, Kuffner at Abstract. Furthermore, Kuffner arguably teaches the multimode communication device further comprising a transceiver configured as CDMA 2000 that uses 800 MHz (Fig. 5) may be redeployed as GPS that uses 1575 MHz (Fig. 4) because of antenna orientation that may be more favorable. *See e.g.*, Kuffner at page 3, paragraph [0028]. By way of contrast, claim 21 teaches a configuration processor converting at least one of a PHY block to be arranged to operate according to desired radio protocol. Furthermore, claim 21 teaches that when none of the PHY blocks are available, an infrequently utilized PHY block may be converted to the desired radio protocol. *See e.g.*, Specification at paragraph [0026]. Consequently, the Kuffner reference fails to teach at least the language of “when there is not an available physical layer block, arranging a one of the two or more physical layer blocks that is infrequently utilized to operate according to the desired communication protocol” as recited in claim 21.

Accordingly, Applicant respectfully submits that the cited references fail to disclose, teach or suggest every element recited in claim independent claim 21, whether taken alone or in combination. Applicant further submits that there is no explicit or implicit teaching, suggestion, or motivation to modify the cited references to include all of the recited features of independent claim 21. Applicant submits, the cited references are insufficient to render independent claim 21 obvious under § 103(a). Applicant submits, therefore, that independent claim 21 is allowable.

Additionally, if an independent claim is non-obvious under 35 U.S.C. § 103, then any claim depending therefrom is non-obvious. *See e.g.*, MPEP § 2143.03. Applicant submits, therefore, that dependent claims 21-25 are allowable at least by virtue of their dependency from allowable claim 21, as well as on their own merits.

Independent claims 26, 30 and 34 recite features similar to those recited in independent claim 21. Therefore, applicant respectfully submits that claims 26, 30, and 34 are not obvious and are allowable over the cited references, taken alone or in combination, for reasons analogous to those presented with respect to claim 21. Applicant further submits that there is no explicit or implicit teaching, suggestion, or motivation to modify the cited references to include all of the recited features independent claims 26, 30 and 34.

Accordingly, Applicant respectfully requests removal of the obviousness rejection with respect to claims 26, 30, and 34. Furthermore, Applicant respectfully requests withdrawal of the obviousness rejection with respect to claims 27-29, 31-33, and 35-38 that depend from claims 26, 30, and 34 respectively, and therefore contain additional features that further distinguish these claims from the cited references.

### **Conclusion**

For at least the above reasons, Applicant submits that claims 21-38 recite novel features not shown by the cited references. Further, Applicant submits that the above-recited novel features provide new and unexpected results not recognized by the cited references. Accordingly, Applicant submits that the claims are not anticipated nor rendered obvious in view of the cited references.

Applicant does not otherwise concede, however, the correctness of the Office Action's rejection with respect to any of the dependent claims discussed above. Accordingly, Applicant hereby reserves the right to make additional arguments as may be necessary to further distinguish the dependent claims from the cited references, taken alone or in combination, based on additional features contained in the dependent claims that were not discussed above. A detailed discussion of these differences is believed to

be unnecessary at this time in view of the basic differences in the independent claims pointed out above.

It is believed that claims 21-38 are in allowable form. Accordingly, a timely Notice of Allowance to this effect is earnestly solicited.

The Examiner is invited to contact the undersigned at 724-933-9338 to discuss any matter concerning this application.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. § 1.16 or § 1.17 to Deposit Account 50-4238.

Respectfully submitted,

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John F. Kacvinsky, Reg. No. 40,040  
Under 37 CFR 1.34(a)

Dated: August 12, 2008

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